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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TESLA, INC., a Delaware corporation,

Plaintiff,

vs.

MARTIN TRIPP, an individual,

Defendant.

MARTIN TRIPP, an individual,

Counterclaimant,

TESLA, INC., a Delaware corporation,

Counterdefendant.

Case No. 3:18-cv-00296-LRH-CBC

**DEFENDANT/COUNTERCLAIMANT
 MARTIN TRIPP’S MOTION FOR
 LEAVE TO FILE SURREPLY TO
 TESLA, INC.’S REPLY IN SUPPORT
 OF ITS MOTION FOR SUMMARY
 JUDGMENT [ECF NO. 193]**

Tesla’ reply memorandum in support of its motion for summary judgment [ECF No. 193] purports to “provide[] several additional exhibits that further refute Tripp’s new ‘facts.’” *Id.* at 2 n.1. That Tesla feels the need to “refute” the facts in Tripp’s response memorandum [ECF No. 177] with “additional exhibits” by itself demonstrates that Tripp’s factual assertions are both material and disputed, thereby precluding summary judgment. *Burlington Ins. Co. v. Minadora Holdings, LLC*, 690 Fed. Appx. 918, 923 (9th Cir. 2017) (“Factual disputes

1 preclude summary judgment.”). Nevertheless, the Court should not consider these “additional
2 exhibits” without permitting Tripp an opportunity to respond. *See Provenz v. Miller*, 102 F.3d
3 1478, 1483 (9th Cir. 1996) (“Where new evidence is presented in a reply to a motion for
4 summary judgment, the district court should not consider the new evidence without giving
5 the [non-]movant an opportunity to respond.”) (*quoting Black v. TIC Inv. Corp.*, 900 F.2d
6 112, 116 (7th Cir.1990)).

7 This Court permits a nonmoving party to file a surreply “only by leave of court and
8 only to address new matters raised in a reply to which a party would otherwise be unable to
9 respond.” *Harkey v. U.S. Bank, N.A.*, 2:14-CV-00177-RFB, 2015 WL 300271, at *1 (D. Nev.
10 Jan. 21, 2015); *see also* Tesla’s Motion to File Surreply in Opposition to Motion to Compel
11 Deposition of Non-Party Elon Musk [ECF No. 123]. Accordingly, Tripp seeks leave of the
12 Court to file the surreply attached as **Exhibit 1** to respond only to Tesla’s “additional
13 exhibits.”

14 DATED this 16th day of June, 2020.

15 TIFFANY & BOSCO, P.A.

16 By /s/William M. Fischbach III

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PROOF OF SERVICE

I am employed in the County of Maricopa, State of Arizona. I am over the age of 18 and not a party to the within action; my business address is Tiffany & Bosco, P.A. 2525 E. Camelback Road, Suite 700, Phoenix, Arizona 85016.

On June 16, 2020, I served the following described as:

DEFENDANT/COUNTERCLAIMANT MARTIN TRIPP'S MOTION FOR LEAVE TO FILE SURREPLY TO TESLA, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT [ECF NO. 193]

on the following interested parties in this action:

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☒ (BY E-MAIL) By transmitting the above documents to the above e-mail addresses.

☒ (STATE) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED on this 16th day of June, 2020 at Phoenix, Arizona.

/s/William M. Fischbach III